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17 **UNITED STATES DISTRICT COURT**

18 **DISTRICT OF NEVADA**

19 EYETALK365, LLC,

20 Plaintiff,

21 v.

22 ZMODO TECHNOLOGY CORPORATION  
23 LIMITED,

24 Defendant.

Case No. 2:17-cv-02714-RCJ-PAL

1 EYETALK365, LLC,

2 Plaintiff,

3 v.

4 ZMODO TECHNOLOGY CORPORATION  
5 LIMITED,

6 Defendant.

Case No. 3:17-cv-00686-RCJ-PAL

**[Proposed] Amended Protective Order**

7 It is hereby ORDERED by the Court that the following restrictions and procedures shall  
8 apply to certain information, documents and excerpts from documents supplied by the parties to each  
9 other in response to discovery requests:

10 1. Counsel for any party may designate any document or information  
11 contained in a document as confidential if counsel determines, in good faith, that such designation is  
12 necessary to protect the interests of the client. Information and documents designated by a party as  
13 confidential will be labeled “CONFIDENTIAL – PRODUCED PURSUANT TO PROTECTIVE  
14 ORDER.” “Confidential” information or documents may be referred to collectively as “confidential  
15 information.”

16 2. Access to any documents marked “CONFIDENTIAL – PRODUCED  
17 PURSUANT TO PROTECTIVE ORDER” shall be limited to:

- 18 a. The requesting party and counsel;  
19 b. Employees of such counsel assigned to and necessary to assist in the  
20 litigation;  
21 c. Consultants or experts to the extent deemed necessary by counsel;  
22 d. Any person from whom testimony is taken or is to be taken, except that such  
23 a person may only be shown confidential information during and in  
24 preparation for his/her testimony and may not retain the confidential  
25 information; and  
26 e. The Court or the jury at trial or as exhibits to motions.

27 3. Counsel for any party may designate any documents or information  
28 contained in any document as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” if

1 counsel determines, in good faith, that such designation is necessary to protect the information  
2 within the scope of Fed. R. Civ. P. 26(c), including information that relates to, among other things,  
3 trade secrets, pending patent applications, research and development or other highly sensitive  
4 technical information, or highly-sensitive business-related financial information including abstracts,  
5 summaries, or information derived therefrom.

6 4. Access to any documents marked “HIGHLY CONFIDENTIAL – ATTORNEYS’  
7 EYES ONLY” shall be limited to:

- 8 a. The Court and its staff;
- 9 b. Attorneys, their law firms, their employees and agents, and their Outside  
10 Vendors;
- 11 c. Persons shown on the face of the document to have authored or received it, any  
12 person who has previously seen or was aware of it, and/or the Producing Party  
13 or its designated representatives (*e.g.*, a 30(b)(6) witness);
- 14 d. Court reporters retained to transcribe testimony and independent language  
15 interpreters used at deposition or hearings;
- 16 e. Other outside persons (*i.e.*, persons not currently employed by any party) who  
17 are retained by a party or its Attorneys to provide assistance or to furnish  
18 technical or expert services, and/or give testimony in this action who have  
19 signed Exhibit A attached hereto; and
- 20 f. Other persons only by written consent of the Producing Party or upon order of  
21 the Court and on such conditions as may be agreed or ordered. All such  
22 persons shall sign Exhibit A.

23 5. The “RESTRICTED CONFIDENTIAL – SOURCE CODE” designation is reserved  
24 for Source Code, and materials and information that contains or substantively relates to a party’s  
25 “Source Code,” which shall mean documents containing or substantively relating to confidential,  
26 proprietary and/or trade secret source code. The following conditions shall govern the production,  
27 review and use of Source Code or design documentation information.

1           6. All such Source Code, and any other confidential information designated as  
2 “RESTRICTED CONFIDENTIAL – SOURCE CODE,” shall be subject to the following provisions:

3           a. Source Code shall ONLY be made available for inspection, not produced  
4 except as provided for below, and shall be made available in electronic format  
5 at one of the following locations chosen based upon the agreement between  
6 the parties: (1) the offices of the Producing Party’s primary outside counsel of  
7 record in this action; (2) a single, third-party site located within any judicial  
8 district in which the Source Code is stored in the ordinary course of business  
9 (*e.g.*, an escrow company); or (3) a location mutually agreed upon by the  
10 receiving and producing parties. Any location under (1), (2) or (3) above shall  
11 be in the continental United States. Source Code will be loaded on a single,  
12 non-networked computer that is password protected and maintained in a  
13 secure, locked room. With the exception of a PC mouse which shall be  
14 configured by the Producing Party, the use or possession of any input/output  
15 device (*e.g.*, USB memory stick, cameras or any camera-enabled device, CDs,  
16 floppy disk, portable hard drive, laptop, or any devices that can access the  
17 Internet or any other network or external system, etc.) is prohibited while  
18 accessing the computer containing the Source Code. All persons entering the  
19 locked room containing the Source Code must agree to submit to reasonable  
20 security measures to insure they are not carrying any prohibited items before  
21 they will be given access to the locked room. The computer containing  
22 Source Code will be made available for inspection during the hours of 9:00  
23 a.m. to 5:00 p.m. local time at the location of the computer containing Source  
24 Code, upon reasonable notice to the Producing Party, which shall not be less  
25 than three (3) business days in advance of the requested inspection.

26           b. The computer containing the Source Code shall include software utilities,  
27 supplied by the Producing Parting, which will allow Receiving Party’s outside  
28 counsel and/or experts to view, search, and analyze the Source Code. At a

1 minimum, these utilities must provide the ability to (a) view, search, and line-  
2 number any source file, (b) search for a given pattern of text through a number  
3 of files (both by file name and within the files for all file types contained  
4 within the Source Code), (c) compare two files and display their differences,  
5 and (d) compute the MD5 checksum of a file. Receiving Party's outside  
6 counsel and/or experts may request that additional commercially available  
7 licensed software tools for viewing and searching Source Code be installed on  
8 the secured computer. The Receiving Party must provide the Producing Party  
9 with the CD, thumbdrive, or DVD containing such software tool(s) at least  
10 four (4) business days in advance of the inspection but this requirement can be  
11 waived by the parties upon agreement. Upon receipt, the Producing Party shall  
12 properly configure the software tools.

13 c. The Receiving Party's outside counsel and/or expert shall be entitled to take  
14 notes relating to the Source Code but may not copy any portion of the Source  
15 Code into the notes. All notes must be taken on consecutively numbered  
16 permanently bound notebooks that are clearly labeled on their cover(s)  
17 ("Review Notebooks"). Notes transcribed into the Review Notebooks must be  
18 limited to matters concerning this case. The Producing Party shall have the  
19 option to provide Review Notebooks to the Receiving Party. Except for  
20 Review Notebooks and Source Code pages printed pursuant to Paragraph 6(d)  
21 below, no other paper may be brought into the review room. No copies of all  
22 or any portion of the Source Code may leave the room in which the Source  
23 Code is inspected except as otherwise provided herein. Except for completing  
24 the destruction of the Review Notebooks at the termination of the litigation,  
25 no pages shall be removed from the Review Notebooks without written  
26 consent from the Producing Party. Further, no other written or electronic  
27 record of the Source Code is permitted except as otherwise provided herein.  
28

- 1 d. No person shall copy, e-mail, transmit, upload, download, print, photograph or  
2 otherwise duplicate any portion of the designated Source Code, except as the  
3 Receiving Party may request a reasonable number of pages of Source Code to  
4 be printed by the Producing Party, but only if and to the extent necessary for  
5 use in this action. In no event may the Receiving Party print more than an  
6 aggregate total of more than 500 pages of Source Code during the duration of  
7 the case without prior consent of the Providing Party, which shall not be  
8 unreasonably withheld. Within five (5) business days or such additional time  
9 as necessary due to volume requested, the Producing Party will provide the  
10 requested material (up to 3 copies) on watermarked or colored paper bearing  
11 Bates numbers and the legend “RESTRICTED CONFIDENTIAL – SOURCE  
12 CODE” unless objected to as discussed below. The printed pages shall  
13 constitute part of the Source Code produced by the Producing Party in this  
14 action.
- 15 e. Any printed pages of Source Code, and any other documents or things  
16 reflecting Source Code that have been designated by the Producing Party as  
17 “RESTRICTED CONFIDENTIAL – SOURCE CODE” may not be copied,  
18 digitally imaged or otherwise duplicated, except in limited excerpts necessary  
19 to attach as exhibits to depositions, expert reports, or court filings as discussed  
20 below.
- 21 f. Any paper copies designated “RESTRICTED CONFIDENTIAL – SOURCE  
22 CODE” shall be stored or viewed only at (1) the offices of outside counsel for  
23 the Receiving Party, (2) the offices of outside experts or consultants who have  
24 been approved to access Source Code; (3) the site where any deposition is  
25 taken (4) the Court; or (5) any intermediate location necessary to transport the  
26 information to a hearing, trial or deposition. Any such paper copies shall be  
27 maintained at all times in secure location under the direct control of counsel  
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1 responsible for maintaining the security and confidentiality of the designated  
2 materials.

3 g. A list of names of persons who will view the Source Code will be provided to  
4 the Producing Party in conjunction with any written (including email) notice  
5 requesting inspection. The Receiving Party shall maintain a daily log of the  
6 names of persons who enter the locked room to view the Source Code and  
7 when they enter and depart. The Producing Party shall be entitled to have a  
8 person observe all entrances and exits from the Source Code viewing room,  
9 and to a copy of the log.

10 h. Unless otherwise agreed in advance by the parties in writing, following each  
11 inspection, the Receiving Party's outside counsel and/or experts shall remove  
12 all notes, documents, and all other materials from the room that may contain  
13 work product and/or attorney-client privileged information. The Producing  
14 Party shall not be responsible for any items left in the room following each  
15 inspection session.

16 i. The Receiving Party will not copy, remove, or otherwise transfer any portion  
17 of the Source Code from the Source Code Computer including, without  
18 limitation, copying, removing, or transferring any portion of the Source Code  
19 onto any other computers or peripheral equipment. The Receiving Party will  
20 not transmit any portion of the Source Code in any way from the location of  
21 the Source Code inspection.

22 j. The Receiving Party's outside counsel shall maintain a log of all copies of the  
23 Source Code (received from a Producing Party) that are delivered by the  
24 Receiving Party to any Qualified person under Paragraph 7 below. The log  
25 shall include the names of the recipients and reviewers of copies and locations  
26 where the copies are stored. Upon request by the Producing Party, the  
27 Receiving Party shall provide reasonable assurances and/or descriptions of the  
28

1 security measures employed by the Receiving Party and/or Qualified person  
2 that receives a copy of any portion of the Source Code;

3 k. Except as provided in this paragraph, the Receiving Party may not create  
4 electronic images, or any other images, of the Source Code from the paper  
5 copy for use on a computer (*e.g.*, may not scan the source code to a PDF, or  
6 photograph the code). The Receiving Party may create an electronic copy or  
7 image of limited excerpts of Source Code only to the extent necessary in a  
8 pleading, exhibit, expert report, discovery document, deposition, other Court  
9 document, or any drafts of these documents (“SOURCE CODE  
10 DOCUMENTS”). The Receiving Party shall only include such excerpts as  
11 are reasonably necessary for the purposes for which such part of the Source  
12 Code is used. Images or copies of Source Code shall not be included in  
13 correspondence between the parties (references to production numbers shall  
14 be used instead). The Receiving Party may create an electronic image of a  
15 selected portion of the Source Code only when the electronic file containing  
16 such image has been encrypted using commercially reasonable encryption  
17 software including password protection. The communication and/or  
18 disclosure of electronic files containing any portion of Source Code shall at all  
19 times be limited to individuals who are authorized to see Source Code under  
20 the provisions of this Protective Order. The Receiving Party shall maintain a  
21 log of all electronic images and paper copies of Source Code in its possession  
22 or in the possession of its retained consultants, including the names of the  
23 recipients and reviewers of any electronic or paper copies and the locations  
24 where the copies are stored. Additionally, all electronic copies must be  
25 labeled “RESTRICTED CONFIDENTIAL – SOURCE CODE.”

26 l. To the extent portions of Source Code are quoted in a SOURCE CODE  
27 DOCUMENT, either (1) the entire document will be stamped and treated as  
28 RESTRICTED CONFIDENTIAL – SOURCE CODE or (2) those pages



1 containing quoted Source Code will be separately bound, and stamped and  
2 treated as RESTRICTED CONFIDENTIAL – SOURCE CODE.

- 3 m. All copies of any portion of the Source Code in whatever form shall be  
4 securely destroyed if they are no longer in use. Copies of Source Code that  
5 are marked as deposition exhibits shall not be provided to the Court Reporter  
6 or attached to deposition transcripts; rather, the deposition record will identify  
7 the exhibit by its production numbers.
- 8 n. The Receiving Party’s outside counsel may only disclose a copy of the Source  
9 Code to individuals specified in Paragraph 7 below (*e.g.*, Source Code may  
10 not be disclosed to in-house counsel).

11 7. Only the following individuals shall have access to “RESTRICTED  
12 CONFIDENTIAL – SOURCE CODE” materials, absent the express written consent of the  
13 Producing Party or further court order:

- 14 a. Outside counsel of record for the parties to this action, including any  
15 attorneys, paralegals, technology specialists and clerical employees of their  
16 respective law firms;
- 17 b. Up to three (3) outside experts or consultants per party, pre-approved in  
18 accordance with Paragraphs 4(e) and 4(f) and specifically identified as  
19 eligible to access Source Code;
- 20 c. The Court, its technical advisor (if one is appointed), the jury, court personnel,  
21 and court reporters or videographers recording testimony or other proceedings  
22 in this action. Court reporters and/or videographers shall not retain or be  
23 given copies of any portions of the Source Code. If used during a deposition,  
24 the deposition record will identify the exhibit by its production numbers;
- 25 d. While testifying at deposition or trial in this action only: (1) any current or  
26 former officer, director or employee of the Producing Party or original source  
27 of the information; (2) any person designated by the Producing Party to  
28 provide testimony pursuant to Rule 30(b)(6) of the Federal Rules of Civil

1 Procedure; and/or (3) any person who authored, previously received (other  
2 than in connection with this litigation), or was directly involved in creating,  
3 modifying, or editing the Source Code, as evident from its face or reasonably  
4 certain in view of other testimony or evidence. Persons authorized to view  
5 Source Code pursuant to this sub-paragraph shall not retain or be given copies  
6 of the Source Code except while so testifying.

7 8. Prior to disclosing or displaying to any person information or documents  
8 marked “CONFIDENTIAL – PRODUCED PURSUANT TO PROTECTIVE ORDER,” “HIGHLY  
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL –  
10 SOURCE CODE” counsel shall:

- 11 a. Inform the person of the confidential nature of the information or  
12 documents; and  
13 b. Inform the person that this Court has enjoined the use of the information or  
14 documents by him/her for any purpose other than this litigation and has  
15 enjoined the disclosure of that information or documents to any other person.

16 9. In the event that a party receiving confidential information (“Receiving Party”)   
17 intends to display to and discuss with a person identified in Paragraphs 2(c) and (d) or 4(e) and (f)   
18 (“Qualified Person”) confidential information disclosed by another party (“Disclosing Party”), the   
19 Receiving Party shall first disclose the identity of such Qualified Person to the Disclosing Party. If   
20 the Qualified Person is one identified in Paragraphs 2(c) or 4(e), the Receiving Party shall also   
21 provide to the Disclosing Party the Qualified Person’s resume. The Receiving Party shall then have   
22 five (5) business days to object to the disclosure of CONFIDENTIAL – PRODUCED PURSUANT   
23 TO PROTECTIVE ORDER, HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY, or   
24 RESTRICTED CONFIDENTIAL – SOURCE CODE to the Qualified Person. The Parties shall then   
25 attempt to resolve the objection by meeting and conferring. If the parties cannot resolve the   
26 objection, the Disclosing Party shall have the obligation of filing a motion with the Court in order to   
27 resolve the dispute within three (3) business days of the Parties’ meeting.

1           10. Information marked in accordance with this Order may be displayed to and discussed  
2 with Qualified Persons only on the condition that prior to any such display or discussion, each such  
3 person shall be asked to sign an agreement to be bound by this Order in the form attached as Exhibit  
4 A. In the event such person refuses to sign an agreement in the form attached as Exhibit A, the party  
5 desiring to disclose the confidential information may seek appropriate relief from this Court.

6           11. Third parties producing documents or Source Code in the course of this action may  
7 also designate documents and Source Code as “CONFIDENTIAL – PRODUCED PURSUANT TO  
8 PROTECTIVE ORDER,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or  
9 “RESTRICTED CONFIDENTIAL – SOURCE CODE” subject to the same protections and  
10 constraints as the parties to the action. A copy of the Protective Order shall be served along with any  
11 subpoena served in connection with this action. All documents and Source Code produced by such  
12 third parties shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and  
13 “RESTRICTED CONFIDENTIAL – SOURCE CODE,” respectively, for a period of 7 days from the  
14 date of their production, and during that period any party may designate such documents and Source  
15 Code as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY” or  
16 “RESTRICTED CONFIDENTIAL – SOURCE CODE” pursuant to the terms of the Protective Order.

17           12. Unless otherwise ordered by the Court, or otherwise provided for herein, the  
18 confidential information disclosed will be held and used by the person receiving such information  
19 solely for use in connection with the above-captioned action.

20           13. Any person reviewing RESTRICTED CONFIDENTIAL – SOURCE CODE shall not,  
21 for a period commencing upon receipt of such information and ending one (1) year following the  
22 conclusion of this case (including any appeals) engage in using the RESTRICTED CONFIDENTIAL  
23 – SOURCE CODE in any Prosecution Activity (as defined below).

24           a. Prosecution Activity shall mean any activity related to the competitive  
25 business decisions involving: (1) the preparation or prosecution (for any  
26 person or entity) of new patent applications relating to video doorbells  
27 involving new or additional subject matter. Nothing in this paragraph shall  
28 prevent any attorney from advising the client in inter partes review,

1 reexamination, reissues, and/or consulting the client in patent prosecution  
2 related to video doorbells on information that is publicly known, becomes  
3 publicly known, has been claimed previously in other patents having a  
4 familial relationship to the Patents-in-Suit, has or becomes disclosed to any  
5 third party, or that is not related to the RESTRICTED CONFIDENTIAL –  
6 SOURCE CODE. Nothing in this provision shall prohibit any attorney of  
7 record in this litigation from discussing any aspect of this case that is  
8 reasonably necessary for the prosecution or defense of any claim or  
9 counterclaim in this litigation with his/her client.

10 14. In the event a party challenges another party's confidential designation, counsel shall  
11 make a good faith effort to resolve the dispute, and in the absence of a resolution, the challenging  
12 party may thereafter seek resolution by the Court. Nothing in this Protective Order constitutes an  
13 admission by any party that confidential information disclosed in this case is relevant or admissible.  
14 Each party specifically reserves the right to object to the use or admissibility of all confidential  
15 information disclosed, in accordance with applicable law.

16 15. For the purpose of Paragraphs 2(d) and (e) and 4(d) and (e) it is understood by the  
17 parties that any documents which become part of an official judicial proceeding or which are filed  
18 with the Court are public documents, and that such documents can and will be sealed by the court  
19 only upon motion and in accordance with applicable law.

20 16. At the conclusion of litigation, the confidential information and any copies thereof  
21 shall be promptly (and in no event later than thirty (30) days after entry of a final judgment no longer  
22 subject to further appeal) returned to the Producing Party or certified as destroyed.

23 17. The foregoing is entirely without prejudice to the right of any party to  
24 apply to the Court for any further Protective Order relating to confidential information; or to object to  
25 the production of documents or information; or to apply to the Court for an order compelling  
26 production of documents or information; or for modification of this Order.

27 ///

28 ///

1 Dated: August 21, 2018

BROWNSTEIN HYATT FARBER SCHRECK,  
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18 Attorneys for Defendant

19 Zmodo Technology Corporation Limited

20 IT IS SO ORDERED

21   
22 UNITED STATES MAGISTRATE JUDGE

23 DATED: August 23, 2018  
24  
25  
26  
27  
28

**EXHIBIT A**

I have been informed by counsel that certain documents or information to be disclosed to me in connection with the matter entitled *Eyetalk365, LLC v. Zmodo Technology Corp. Limited* have been designated as “CONFIDENTIAL – PRODUCED PURSUANT TO PROTECTIVE ORDER,” “RESTRICTED CONFIDENTIAL – SOURCE CODE,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” I have been informed that any such document or information labeled as “CONFIDENTIAL – PRODUCED PURSUANT TO PROTECTIVE ORDER,” “RESTRICTED CONFIDENTIAL – SOURCE CODE,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” are confidential by Order of the Court, and should be treated according to the order.

Under penalty of contempt of Court, I hereby agree that I will not disclose any information contained in any such documents designated as “CONFIDENTIAL – PRODUCED PURSUANT TO PROTECTIVE ORDER,” “RESTRICTED CONFIDENTIAL – SOURCE CODE,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to any other person, and I further agree not to use any such information for any purpose other than this litigation.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Signature